

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 7157 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

MAHIYUDDINBHAI YUSUFBHAI SUTHAR & 2 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

=====

Appearance :

MR FB BRAHMBHATT for Applicant(s) : 1 - 3.

MR DIPEN DESAI, APP for Respondent(s) : 1,

NOTICE SERVED for Respondent(s) : 2,

MR YOGESH S LAKHANI for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/10/2007

ORAL JUDGMENT

1. At the outset, learned advocate Shri Brahmhatt
for the applicants does not press this

application qua applicant no.1. He however, advances his arguments insofar as other two applicants are concerned.

2. In the present application, the applicants have prayed for quashing of complaint bearing Criminal Case No.1165/1999 dated 18.11.1999 filed before Judicial Magistrate First Class, Radhanpur and the process issued thereon by the learned Judge. In the complaint, respondent no.2-complainant stated inter-alia that he had purchased a truck from applicant no.1 (original accused no.1) on 17.10.1998 for a sum of Rs.5,61,786/-. The said accused had also handed over the original R.C. Book and delivered the possession of the truck upon payment of full sale price on different dates. Subsequently, however, on 3.12.1998 one person from Mumbai accompanied by two other persons approached the complainant and snatched away the truck from him forcibly for which he also filed complaint on 8.2.1999. Upon being approached, the complainant was told that accused persons will somehow retrieve the truck from Mumbai. However, on 29.10.1999, the accused did not give satisfactory reply and, thereafter, also failed to handover the truck back to the complainant.

3. Learned advocate Shri Brahmhatt for the applicants submitted that the complaint was filed nearly one year after the alleged

incident. The complaint on face of it would reveal that there was no dishonest intention on part of the applicants nos. 2 and 3 and they had no role to play in selling the truck to the complainant. Learned APP Shri Dipen Desai for the State and learned advocate Shri R.J. Dholakia for Shri Yogesh Lakhani for respondent no.2-complainant opposed the application.

4. Having heard learned advocates appearing for the parties and having perused the material on record and confining this order only qua applicants nos. 2 and 3 i.e. original accused nos. 2 and 3, I find that the complainant has not made out any case against the said applicants in the complaint. At the outset, it may be noted that it was accused no.1 who sold the truck to the complainant as per the statement made in the complaint itself. It is not in dispute that accused no.1 was owner of the truck and accused nos. 2 and 3 are the brother and father of accused no.1 respectively. There are no allegations in the complaint that these accused persons had any role to play in selling the truck to the complainant. When this fundamental requirement of involvement of accused no.2 and 3 in sale of the truck to the complainant is not reflected from the complaint, the subsequent allegation in my view would not be sufficient to drive home the charge against the said accused. Even if it is believed that

later on these accused persons in order to pacify the complaint, stated that they would ensure recovery of truck from Mumbai, that by itself would not constitute any offence. To drive home any charge of cheating or other such related charge against the said accused, it was necessary to reveal their involvement and complexity in sale of the truck to the complainant with mala fide intention and knowing well that truck was earlier sold or pledged with any other party. Since this essential element is missing from the complaint, I have no hesitation in holding that the complaint as well as the process issued by learned Magistrate thereon are required to be quashed qua these applicants. I cannot escape building an opinion that only with a view to rope in more members of the family, to pressurize the accused no.1, that the complainant has made some general allegations against these accused persons without laying any foundation for disclosing the offence under Indian Penal Code.

5. In the result, qua the applicants nos. 2 and 3, this petition is allowed. The complaint dated 18.11.1999 and process issued by the learned Magistrate thereon are quashed. The application is allowed to the above extent. Rule made absolute qua applicants nos. 2 and 3.

6. Qua the applicant no.1, the application is

dismissed as not pressed. Rule is discharged qua
applicant no.1.

(Akil Kureshi,J.)

(raghu)